Supreme Court, U.S.
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No.

SUPREME COURT OF THE UNITED STATES

Geraldine Mills, M.D.,
Petitioner

v.

C.H.I.L.D.,INC

On Petition for a Writ of Certiorari
to the Supreme Court of Rhode Island

PETITION FOR WRIT OF CERTIORARI

September 16, 2004

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS

Are Defendants entitled to judgment as a matter of law where:a) genuine issues of material fact exist b) discovery was not complete, in fact not allowed. c) state of mind and intent are in issue

Is not Rhode Island law well-established in its allowance of motions to amend pleadings as long as they are timely do not prejudice the other party? Does Bisson v. Joseph 103 R.I.1967 with Rules taking effect April1, 1970 govern all proceedings and supplant the 1890 Kenyon v. Cameron 17 R.I.122? Were not the R.I. Rules of Civil Procedure of 1966 denied Mills

Does not the Federal Civil Rules Handbook 2001 at 217 218 Baicker-McKee, Janssen &Coor) contain the only permissible exceptions to the " notice" pleading standard of Rule8(a) R.I. Superior Court Rules of Civil Procedure?

Is an attack on one's professional competency a "slander per se?"
Are not the questions of motivation questions of fact for the jury and therefore NOT susceptible to summary disposition?

Were the communications made by employees of CHILD INC and its Director, communicated with " common interest" ie. best interests of third party in mind?

Does conditional privilege exist for these Defendants

Did these defendants have Justification in their reporting to the parents' of children in Mills'care? D

Does Karen Stanley Director of CHILD INC day care have immunity when making statements to multiple third parties as

Attorney Mills. Dr Mills. day care employees as Vickki Tournquist and Kristen Brooks, and in particular statements that are without factual basis
?

What if any nexus exists between parties Karen Stanley and Counsel Bruce McIntyre of the Medical Board of Licensure State of R.I.? (State actors, private parties working with state Officials or private parties)?

Lower court decision to withhold the case from a jury -does this impinge upon Mills' jury Trial rights?

Are there substantial due process questions and is the decision below so wrong and "so totally devoid of evidentiary support as to render it unconstitutional under the Due Process Clause of the Fourteenth Amendment" or on " any evidence at all."

Are the Director Stanley and the employees of CHILD INC protected by absolute immunity under the R.I. State laws (RIGL) when the question is of intent to harm and malice?

Is the decision of the R.I. lower courts in conflict with the US Supreme Court's decision in the Patrick vs Burgett case wherein it was concluded that there was no immunity because the state did not have the authority to review anti competitive action undertaken by a peer review committee?

Does the issue of how active a State's regulators must be before the " active supervision" requirement will be satisfied still result in questions for the Court of Appeals? Do state regulatory programs fail to provide immunity for lack of active supervision under the test adopted by the Court of Appeals citing cases Patrick vs Burgett and California Retail Liquor Dealers Assn vs Midcal AluminumInc?

TABLE OF CONTENTS

Page

Questions Presented.....i

Table of Contents.....iii

Table of Authorities.....iv

Table of Appendices.....vi

Introductory Paragraph and Opinions Below.....1

Jurisdiction.....2

Statement of the Case.....6

The Argument- Questions are Substantial.....8

Decision below conflicts with Precedents.....17

Conclusion and Names of Counsel.....19

TABLE OF AUTHORITIES

CASES: Page

Babbs v John Hancock Life Ins Co 507 A 2d 1347(1986).....3
Baker v Warner 34 S.Ct 175,231U.S.588.58L.Ed384
re:questions for the jury.....6
Barr v City of Columbia 378.U.S.146,149(1964).....16
Bisson v. Joseph 103 R.I. 1967 re: amending complaints.....4
Bryant v Zimmerman 278 US 63 67 (1928).....11
Caine v Hardy.....18
California Retail Liquor Delaers Assn v Midcal Aluminum
Inc re: regulatory programs fail to provide immunity.ii
Cox Broadcasting Corp V Cohn 420US469,482-83(1975).....2
Diamond National Corp v State Board of Equalization 425..10

Eddihngs v Oklahoma 455 US 104 113-14 n.9 (1982).....11
Greenburg v Puerto Rico Maritime Shipping Authority 835
F.2d 932,936 (ist Cir 1987) re: justice to superimpose .....
his own ideas of probability and likelihood.....16
Inleasing Corp v Jessup 475 A.2d 989 (R.I..1984).....3
Kenny v Prov Gas Co 118 RI 145,372 A.2de 510(1977).....3,4.
Kenyon vs Cameron 17 RI 122,20 A.233(1890) case
DEFENDANTS RELIED UPON.....1,12
O'Brien v Times Publishing Co 21 RI 256,43 A.2d 101
(1899)re: character of slander per se " slander per se
does not require proof of special damages.....5
Pollard v United States 352 US 354,359(1957).....11
Pollard v Lyon 91 US 225,23 L.Ed 308 re " special damage as
proximate consequence of words spoken.." Means
pecuniary loss but may also include " LOSS OF SUB-
STANTIAL HOSPITALITY OF FRIENDS".." DEFAMA-
TORY WORDS WHICH PRJUDICE PARTY IN
PROFESSION AND TRADE..."....13

Ponticelli v Mine Safety Appliance Co 104 R.I.549, 551, 247
A.2d 303,306 (1968).re:"is for a factfinder to resolve...15,16
Rue v Mitchell 2 US 58,2 Dall,58,i,L.Ed 288, 1 Am Dec

258 re: questions for the jury.....6
Superior Boiler Works Inc vs R.J. Sanders Inc 711 A.2d 628
631 (R.I. 1998) re "must refrain from weighing evidence...16
Swanson v Speidel Corp et al 110 R.I.335,293 A.2d 307
July 11,1972 re; slander and questions of motivation.....16
Timothy Patrick v Burgett et al re: interference with
prospective economic advantage..... 19
Thompson v City of Louisville 362, US 199 (1960).....17
White v Nicholls 44 US 266,3 How. 266,11 L.Ed 591 re
" degredation in society as result of object of defamation"
Wolfe v No Carolina 364 US 177,195 (1960)..... 11
Wood v Georgia 450 US @265 n5.....11
Wilkerson v McCarthy 18
REGULATIONS:
R.I. General Laws 5-37, 9-1-14(a), 9-1-36.....4,9,14..
HPPA re: transfer of confidential health care information 9
Administrative Procedures Act re:confidentiality
until a hearing or agreed upon consent order is signed.....15
RULES:
Federal Civil Rules Handbook 2001 at 217,218 (Baicker
-McKee Jansssen & Coor) re:Notice pleadinig standard of..5
Rule 8(a)Superior Court Rules of Civil Procedure.....4
R.I. Super R. Civ P.56@ re: not passing on issues of 5
Credibility
R.I. Rule 50 B motion
Federal Rules of Civil P (8).....4
R.I. Super R. 8(a) 9(b) 9(f).....4
1966 RI Rules CP.....4
STATUTES:
28 U.S.C. 1257(a) 2,9
Title VII of the Civil Rights Act of 1964 as amended
by Equal Opportunity Act of 1972 42, U.S.C. 2000
and under 28 U.S.C. 1331.....3
HPPA Federal laws.....9
HCQIA 1986 (Health Care Quality Improvement Act).....18
U.S. App D.C. (1986)U.S. Dist Col (1875).....5

TABLE OF APPENDICES

Appendix Opinions, Findings Judgments Below.....1a

Opinion of the Supreme Court of Rhode Island Dated And Filed December 19, 2003.....3a

Order Granting Partial Summary Judgment Dated September 24,2001.....13a

Order Granting and Denying in Part Plaintiff's Motion To Amend Complaint Dated September 24, 2001.....13a

Plaintiff's Order for Transcript.....14a

Karen Stanley in Deposition.....14a

Counsel Bruce W. McIntyre's Affidavit.....

Medical Board Order of Bruce W. McIntyre.....16a

Affidavit of Stephen H. Mills, Esq.....17a

Gas station is suspected leak source.....17a

Randell Alexander,M.D.PhD and Marc Feldman,M.D.....18a

INTRODUCTORY PARAGRAPH

Appellant, Geraldine Mills, M.D. is appealing from the judgment below as ordered by the Rhode Island Supreme Court in the case of Mills v. C.H.I.L.D.,INC, and so signed December15,2003. This petition for Writ of Certiorari is submitted to show that this Honorable United States Supreme Court has jurisdcition of this appeal and that substantial questions are presented.

CITATIONS TO OPINIONS BELOW

The lower Superior Court dismissed claims of slander and interference with contract stating that Plaintiff, Mills 'failed to submit evidence to create a genuine issue of material fact for a jury to decide whether she was entitled to recover damages.

The lower Superior Court ruled that the Defendants were entitled to judgment as a matter of law.

R.I. Supreme Court affirmed the above for the following reasons:

1) Defendants were entitled to " qualified privilege"

2) Mills failed to introduce " ANY" evidence from which a jury could infer ill will or malice

3) because Mills suffered " NO damages" as a result of the alleged intentional interference with contract

The lower Superior Court denied Mills' motion to amend based upon the case of Kenyon vs Cameron (1890).

The R.I. supreme Court stated that Mills " failed to order a transcript of the first summary judgment hearing"and " because and " because of the absence of the transcript, we are constrained to conclude that the trial justice did not abuse her discretion in partially denying the motion."The R.I. Supreme Court affirmed the lower Superior Court's decision to deny Mills the amended complaint, all discovery, the existence of genuine issues of material fact but then affirm and conclude

Mills did not make a prima facie case of tortious interference of contract because there was no evidence upon which to find that she suffered ANY damages from the alleged interference.

JURISDICTION

This Case Falls Within This Court's Jurisdiction under 28 U.S.C..1257 (a) And Offers an Ideal Vehicle To resolve The Questions Presented.

This Court has jurisdiction under the "fourth Cox category" to review a state court ruling if 1) "reversal of the state court on the Federal issue would be preclusive of any further litigation on the relevant cause of action, " and 2)" refusal immediately to review the state court decision might seriously erode federal policy." Cox Broadcasting Corp v Cohn 420 US 469,482-83 (1975), for application of this general jurisdiction rule.

Petitioner if so favored by this Court, would deem the state law causes of action by the Rhode Island Superior and Supreme Courts unconstitutional as so applied.

In the instant case, what is at stake is the risk of setting precedent to further deprive Physicians throughout these United States from their civil and constitutional rights to defend themselves. It would further "seriously erode federal policy" as it would apply to one's due process under the Fourteenth Amendment.

The judgment of the Supreme Court of Rhode Island was entered on December 1, 2003 and denied a timely petition for rehearing. This Court signed an order extending the time for filing this petition for certiorari to and including May 17 2004. The jurisdiction of this court is invoked under 28 U.S.C. 1257 (a).

A review of the state court judgment is sought. The federal questions raised were done so in the lower court record in the supplemental statement to Supreme Court at pgs10 & 11. The issue here was " constitutional rights " being denied under

the Due Process Clause of the Fourteenth Amendment. Here the specific issues were 1) lack of evidentiary support, 2) procedural errors and 3) reliance on federal cases misconstruing the Federal Rules of Civil Procedure for the proposition that a higher standard of pleading is required when slander is alleged. This was noted in the memorandum in objection to motion for summary judgment.

The jurisdiction of the state court was also invoked under Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972 U.S.C.2000 and under 28 U.S.C. 1331.

In memorandum in support to amend at page 1, it reads in part," ...and because amendment will more fully preserve and protect Plaintiff's rights." It furthers,"... will enable the pleadings to conform to evidence as it has developed since the instant case first was filed..." Being well established Rhode Island practice that a Plaintiff's motion to amend pleadings should be granted if timely and does not prejudice the other party, places the lower state courts to a standard that has been grossly misapplied. (1)

(1) Babbs v. John Hancock Life Insurance Co, 507A.2d 1347 (1986)

Rule 15a allows party to amend pleadings as a matter of course at any time before a responsive pleading is served

Kenny vs Providence Gas Co. 118 R.I. 145,372 A 2d 510 (1977) " granted liberally where there is no showing of material prejudice to the interests of the adverse party

Inleasing Corp vs Jessup 475 A 2d 989 (R.I. 19894)" even after entry of final judgment, amendments to pleadings may be granted, " and " mere delay is insufficient grounds for denying Plaintiff's motion to amend pleadings(id.@ 992)

On July 9, 2001, parties to the instant case were asked to present memoranda to the lower court on the issue whether a cause of action for slander must be pled with PARTICULARITY pursuant to R.I. law. Plaintiff avers that NO statute, procedural rule or precedential case law exists in R.I. to

require a cause of action alleging slander to be pled with specificity beyond that which Plaintiff had pled to that date.

(2) R.I.G.L. 9-1-14 (a) and R.I.G.L. 9-1-36 " ...actions for words spoken shall be commenced and sued within one year next after the words of spoken and not after.."

Rhode Island Superior Court Rules of Civil Procedure 8(a),9(b), and 9(f)

8(a)"..a pleading which sets forth a claim for relief...Shall contain (1) a short and plain statement of the claim and pleader is entitled to relief and (2) a demand for judgmentfor which pleader seeks."

9(b)"...in all averments of fraud or mistake...shall be stated with particularity."

9(f) " ...averments of time and place are material and shall be considered..."

For the Defendants to rely on the case of Kenyon vs.Cameron 17 RI 122,20 A 233 (1890) the issue is essentially a PROCEDURAL ONE which is the problem. In 1966 R.I.Rules of Civil Procedure were implemented, supplanting the rules of pleading which applied to Kenyon. This was pled and ignored and misapplied by the lower court. The original R.C.P. 86, it reads in the memoranda of July 18, 2001 for the Plaintiff, stated, " these rules shall take effect on January10,1966. They govern all proceedings in actions brought in actions then pending..."

(3) Bisson vs. Joseph 103 R.I. 145,235,A.2d 876,878(1967)

Defendants also relied on federal cases construing the Federal Rules of Civil Procedure for the proposition that a higher standard of pleading is required when slander is alleged. However, these cases reflect the minority point of view.

(4) Comment to F.R.C.P. 8 " Although claims for relief may be quite detailed, a party making a claim must satisfy only the " notice" pleading standard. The "notice"pleading standard of Rule 8 differs from the fact pleading standard in many State courts that require detailed factual averments. A pleading

generally meets the " notice" pleading standard if the pleading notifies the adverse party of the claim and the proposed relief sought to a degree sufficient to enable the adverse party to formulate a response.A pleader does not have to set forth legal theories. In its Liberality, Rule 8's" notice" pleading standard thus erects a powerful presumption against dismissing pleadings as deficient..."

Case Law Exceptions: It now appears settled that the only permissible exceptions to the notice pleading standard of Rule 8(a) are those contained in other Rules themselves, Baicker-McKee,Janssen and Coor Federal Civil Rules Handbook 2001 at 217,218.

From both a procedural standpoint and based on the character of the slander which being on the Plaintiff's professional competency is slander per se, Plaintiff utilizing Rule14.1 (g) (I) submits the above as part of her statement of the instant case. It is sufficient that Plaintiff's business reputation was attacked. As so noted, Defendants continually allude to the issue of Plaintiff not producing medical records, yet Mills defends by stating that all records were produced when properly executed releases were obtained as per R.I.G.L's.

(See Defendants' motion for summary judgment and Bruce McIntyre's letter dated September 25, 1998). (5)

(5) O'Brien vs Times Publishing Co R.I. 256,43A 2d 101 (1899)

U.S. District Col. 1875 Oral slander as a cause of action may be divided into five classes as follows: (1) words falsely spoken of a person...Involving moral turpitude...(2) words falsely spoken of a person...party is infected with some disease (3) defamatory words falsely spoken of a person which impute to the party UNFITNESS TO PERFORM THE DUTIES OF AN OFFICE OR EMPLOYMENT OF PROFIT OR THE WANT OF INTEGRITY ....(4) defamatory words falsely spoken of a party which prejudices such party in his or her

profession or trade (5) defamatory words falsely spoken which...occasion the party special damage.It is the ' province of the jury to determine from the EVIDENCE whether the meaning was truly ascribed by the innuendo and whether or not the words were spoken with that meaning." Pa. 1790 Rue v. Mitchell, 2 U.S. 58, 2 Dall. 58, 1 L.Ed 288, 1 Am Dec 258.

US. App. D.C. 1913 " Whether words not libelous per se import a defamatory meaning is for the jury..." Baker v Warner 34, S Ct. 175,231, US 588, 58 L.Ed 384.

Plaintiff was denied her procedural, civil, and constitutional rights to have these issues decided by a jury.

STATEMENT OF THE CASE

Plaintiff, Geraldine Mills, M.D., a Pediatrician, was so engaged in 1998 when the events of the instant case occurred. Plaintiff ("Mills") was also a Registered Provider for United Health Insurance Co. And its Rite Care program, and was so from its inception in 1994 in Rhode Island. Mills continued to be such a provider through the events of this case and well beyond. Mills' practice was 95% low income and welfare. In 1994, 75% of these patients were placed on the Rite Care Program, constituting the bulk of Mills' Pediatric practice.

C.H.I.L.D.,Inc. A nonprofit day care (Mills believes is in part federally subsidized) is located in Warwick, R.I., the same city location of Mills' practice and her home community. Many of Mills' patients attended this daycare.

Two events precipitated the instant dispute: 1) On or about September 30, 1998, parents of patients made frantic calls to Mills' office (Yom Kippur day messages have been kept from the answering machine in original form), relaying information that employees of C.H.I.L.D, INC told them Mills was no longer accepting Rite Care United Health and advising them to find new Pediatricians, 2) On or about October 1, 1998 when Mills first heard these messages, she asked her brother Attorney Stephen Mills, to contact the daycare Director, then Karen Stanley. (Affidavit of SH Mills,Esq in Appendix) Stanley

told Attorney Mills that, " something was in the works for Dr Mills to lose her medical license," and that she had been so told by Counsel Bruce McIntyre of the R.I. Board of Medical Licensure,(Affidavit of Bruce McIntyre, Esq in Appendix)

Mills brought the instant suit alleging slander and interference with contractual relations during one year as allowed by statute of limitations, on or about September 29,1999.

The following is a description of the proceedings and the rulings of the lower courts:

Mills complaint filed September 29, 1999

Mills filed motion to amend complaint July 18,2001

Defendant filed objection and memorandum in opposition to motion to amend July 27,2001

Defendant filed motion for summary judgment August 2, 2001

Mills filed objection to motion for summary judgment August 14, 2001

Justice Vogel ordered September 24,2001

A) in part granting and in part denying motion to amend Complaint Denying amended complaint as to Count I (slander) Count III (invasion of privacy and disparagement) Count IV (prima facie tort) Granting amended complaint as to Count II (interference with contractual and advantageous relationship B) in part granting and in part denying motion for summary judgment as above in part A.

Defendant filed again motion for summary judgment on remainder of Counts June 2002

Mills filed objection to motion for summary judgment July 2002

Justice Pfeiffer heard the motions on September 23,2002 and ruled on October 15, 2002 for summary judgment in favor of Defendants

Mills filed a prebriefing statement to R.I Supreme Court March 2003

Mills filed a supplemental statement to R.I. Supreme Court July 2003

Show cause hearing with presentation by Mills prose and Counsel McCormick for CHILD,INC. October 28,2003

Supreme Court entered its final order December 1, 2003

Mills filed motion to rehear but was denied

ARGUMENT
REASONS FOR THE GRANTING OF WRIT
THE QUESTIONS ARE SUBSTANTIAL

The instant case was brought by Plaintiff due to the NEXUS of a daycare Director Karen Stanley with Counsel Bruce McIntyre of the Rhode Island Board of Medical Licensure. At the time the instant case was filed, September 29, 1999, Mills had just been instructed by McIntyre to cease seeing her patients (September 22, 1999). At this time McIntyre was the legal counsel on the Board, for the Board and investigating member. Subsequently for over two and one half years, McIntyre assumed the position of Acting Chief Administrative Officer.

Mills pled the instant case with particularity as to the statements of CHILD INC employees Vickki Tournquist and Kristen Brooks but not to that of Director Stanley. Mills FEARED retaliation by McIntyre if she pled the statements of Stanley with particularity in that they were uttered by McIntyre himself, " something is in the works for Mills to lose her medical license, McIntyre told me so." On October 19, 1999, Mills was temporarily suspended and remained as such for over two more years, unable to defend herself even with counsel representing her.

Defendants continually allude to the allegations that Plaintiff did not produce medical records, although Mills was barred from her constitutional rights to defend herself against such by the lower court's denial of her motion to amend her

complaint. Those specific statements by Director Stanley to McIntyre included the issue of medical records transfer. The R.I. Supreme Court decision (pgs2.3) reads, " Stanley was having difficulty getting medical records for patients of Mills attending CHILD INC." Mills further defends herself by stating that she could not legally produce records without confidential health care release forms signed by parents, patients(when of age) or guardians. To not comply with this was in violation of RI Gen Law 5-37 as well as the new HPPA(Federal).If these were released without signed authorization, there are fines as $5000.00 and 6 months in prison per record violation.

Stanley in deposition, testified that she did not know of ANY medical records that were not transferred by Mills.With no evidence to support her allegations, she then testified that it " took too long" for the transfers but conceded she did not know how long the state regulations allowed for (it is thirty days).

Mills furthers that the day cares NEVER receive full medical records on it attendees. CHILD INC gave Mills' patients CHILD INC forms which required a list of immunizations given, and lead levels and a very, very brief description of one physical well check. These were issued at most once every six months to one year.

This draws into question Mills' right to due process of law. Under 28 U.S.C. 1257 (a) Mills requests a review of the decision of the R.I. State Courts to deny Mills discovery, right to amend her complaint, and to order summary judgment when genuine issues of material fact still exist. The R.I. Supreme Court decision in supporting Defendants' summary judgment supports the " far beyond fair reading of these state statutes."

McIntyre sent Mills a letter dated September 28, 1998 stating that Mills was in violation of transfer of medical records and had received " multiple complaints." Yet Mills had to that date, never received any complaints. After the incidents for which this case revolve took place, on October 15, 1998, Mills finally received ONE complaint regarding a Cinquegrana family that complained that they could not obtain their childrens'

medical records. The family never returned signed releases sent to them by Mills on 9/4/98 but made a complaint on 9/11/98 (prior to the thirty days allowed by state after written request to physician). McIntyre threatened Mills with suspension is she did not release the Cinquegrana medical records even though they NEVER signed the appropriate release forms as required by R.I. General Law 5-37. This was in violation of Mills' constitutional rights (now in violation of Federal HPPA).

A NEXUS with CHILD INC's Director Karen Stanley and Counsel for the Board, Bruce McIntyre exists and it remains a question for the jury to decide the many, many genuine issues of material fact . Without Mills being allowed ANY evidentiary support, without her being allowed to amend her complaint to even the particulars for which she has been falsely accuse, she is denied her constitutional rights of due process. Stanley and this state official worked together to create a set of false allegations to deprive Mills of her livelihood, to provide McIntyre with the leeway to suspend Mills who had no malpractice suits, had neither harmed nor injured any patients and had given " quality care to her patients" at the hospital where she remained on staff. (Mark Hough, senior VP St Joseph Hospital).

The instant case is brought for review wherein the validity of the underlying state statute is not challenged but has not been afforded this Plaintiff. Mills' federal rights are infringed by the R.I. Supreme Court's application of R.I. state statute in error. Under both state and federal law, Mills has the right to NOT transfer health care information without signed releases.

Mills cites Diamond National Corp v State Board of Equalization 425 US 268 (1976). As to determine if a question was claimed within the meaning of 1257, Justice Harlan is quoted as saying, " it is relevant and usually sufficient to ask whether petitioners satisfied the state rules governing presentation of issues." Mills contends that as per the " book and verse"reference, it was that such a perjured testimony of Stanley was so blatantly obvious that it was unnecessary to cite " book

and verse" on the federal question that Mills was denied her constitutional rights and due process on all issues regarding medical records. That having been said Mills does state those precise words as being not only her privilege to defend herself but she was " denied her constitutional rights to due process, to defend herself with supporting evidence witnesses, to amend her complaint, to complete discovery and to have immunity when reporting a suspicion of child abuse (RI Supreme Court alluded to this in its decision pg 3)

In New York ex rel. Bryant v Zimmerman 278 US63 67 (1928) " ... and if the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented." Precise terms are not necessary as in Eddihngs v Oklahoma 455 US 104 113-14 n,9 (1982) " Our jurisdiction does not depend on citation to "book and verse." Mills cites Pollard v United States 352 US 354,359,(1957) wherein a prisoner filed and later counsel was permitted to raise questions not so raised by pro se below. Mills has been so egregiously denied any of her rights to defend in the State of R.I. as to now be in financial ruin. A definite discriminatory application of R.I. state laws was applied to Mills in so many instances which have resulted in an " evasion of her federal claims." Wolfe v No Carolina 364 US 177,195 (1960).

Mills also requests of this court that they take into account Rule 24.1(a) wherein the Court may at its option consider a plain error not among the questions presented but EVIDENT from the record, to decide, as per the revised 1980 ruling. It is due to the rampant disregard of Mills' rights to due process and fair hearing in all her cases, that her request be honored. As in Wood v Georgia 450 US at 265 n5 Mills requests this Court to "...require such further proceeding to be had as may be just under the circumstances."

Further reading of the R.I. Supreme Court decision contends that Mills did not provide the transcript from the date of September 24, 2001. This is a false allegation (see appendix for copy of request form and payment). Mills even requested in

particular that exact date for it was the record which contained Justice Vogel's words. " the 1890 case was even before my time." and Counsel McCormick remarked, " I had to even dust it off." (Refers to Kenyon v Cameron- the case the lower court cited as reason to deny Mills to amend her complaint and R.I. Supreme Court now states they do not have to address for they state it is " not on the record below." It in particularity, was requested for transmittal whereby the lower court is in error by not so addressing the issue of a 1967 ruling supplanting that of an 1890 case.

Then the RI court admits to failing to review Stanley's statements " something is in the works for Mills to lose her medical license," but refers to the medical records issue (from the very same conversation Mills was not allowed to plead with particularity by amending her complaint). Mills failed to raise the medical record issue in her complaint so at best it is illogical for the court to allude to the one issue and not the other, whereby again breaches Mills rights and due process.

Lower court decision (pg 10) reads "Mills herself contends that she did not lose any patients because of Defendants' alleged interference with her contractual relations."Mills merely stated that those three families that warned her of the actions and conduct of the defendants remained in her practice.Which prospective patients Mills lost and whether the Silva and Cinquegrana families left due to the Defendants' actions are questions for a jury. Mills was not allowed discovery but the court's decision reads, there was no evidence upon which to find that she suffered any damages.

The statements made to parents of Mills' patients that came forward to warn her by the Defendants employees of the daycare were additional reasons to have brought suit but not the issue of gravest concern as already stated.

Stanley told her employees that Mills was no longer taking Rite Care and knew that Mills would lose business and her good reputation with such false and slanderous statements.These Defendants cannot therefore sustain any claim

to lack of knowledge or prejudice as to the nature of Mills' slander allegations. The facts of this case are common knowledge to both parties.

When Stanley was asked in deposition if she had ever told ANYONE to find new medical care, she stated" ABSOLUTELY NOT," but at the same time employees admit she told them that Mills would no longer be able to medically care for her United Health Rite Care patients. This is not just splitting hairs but is one and the same in its meaning. Affidavits of two of the employee Defendants stat that they were not told TO or NOT TO convey the information from Stanley to anyone else. This false slanderous information not only harmed Mills' business but marred her reputation in her own community.

Defendants spend a lot of time in the pleadings in the lower courts, defending their actions and words by claiming JUSTIFICATION and IMMUNITY.

At issue with JUSTIFICATION: As noted in thePlaintiff's supplemental memorandum in support of objection to Summary Judgment it reads as (1) " ....therefore, there is NO justification in the day care workers reporting to patients they need to look for a new doctor." Also at (2) and (3) there is NO justification.

Defendants also use the term and concept of serving some " common interest of third parties," to support their case. Mills contends that NO COMMON INTEREST EXISTED to favorably support Vickki Tournquist, Kristen Brooks, and Karen Stanley's statements to many of Mills' patient families. Having been denied ALL DISCOVERY Mills only knows of those parents that informed Mills by frantic phone calls to her office. It is strongly suspected that the Cinquegrana family (nexus to Medical Board's egregious and unlawful actions through Counsel McIntyre), did transfer to CHILD,INC (again Mills denied ALL DISCOVERY). The Silva family did transfer to the Defendants' daycare as noted by Stanley's deposition (Stanley conceding that Silva got her medical records). Mills (again denied ALL DISCOVERY)can show that Silva signed her

medical release form, mailed it back, so that Mills received it 9/23/98 release mailed to her 9/4/98). Records were transferred to succeeding doctor within thirty days as per R.I. state laws 53-7. Mills did lose the Cinquegrana and Silva families' care but did not lose the care of three families that made those calls to inform her what the Defendants' were telling her patients. Defendants therefore state that Mills CANNOT show damages because these three families remained with her for their medical care.

This denies Mills her constitutional rights and due process to obtain discovery to determine her damages then arriving at a conclusion of summary judgment in favor of Defendants based on Mills could not prove damages.

United Health Rite Care ordinarily ASSIGNS A DOCTOR TO EACH PATIENT PRIOR to the patient registering at the doctors' offices. In fact, these patients CANNOT utilize the services of doctors not on United's registry without having to pay out of pocket expenses (which Rite care patients cannot usually do). The plan AUTOMATICALLY ASSIGNS another doctor to these patients should one physician no longer be on the registry.

Physicians are mandated, in R.I., to give thirty days(30) notice to all patients should they no longer be able to care for their patients, for whatever reasons. They are also required to notify in writing and to place three prospective names of possible succeeding physicians to provide for continuity of care. The physician leaving practice would choose from the list of United registered physicians if the patients had United insurance.

Lastly, one call to Mills or to United Health Insurance company PRIOR to the reporting of " WHAT THEY HEARD" from Stanley would have sufficed to verify if their reports had any validity to them. Stanley, herself, should have made these calls to verify as well. However, it is Plaintiff's belief based upon HER HISTORY with Stanley, that this was ALL PART OF THE SHAM PEER REVIEW SCHEME to put Mills out of business and to suspend Mills' medical license.

Therefore, Mills argues that her allegation of malice

presents a fact question for the fact finder to resolve. She relied upon Ponticelli at 556.247 A.2d at 308. Here the only reasonable conclusion based on the facts is not that the ill will or spite alleged were merely incidental rather than motivating. There was NO common interest that could be decided as a matter of law. There are fact questions for the fact finder to resolve. a question for the jury.

" Ponticelli teaches that a defendant may not UNREASONABLY exercise the qualified privilege.... and an occasion otherwise conditionally privileged cannot be sustained if the defamatory statements have been induced by malice...."(1968 R.I. LEXIS 683 ***9 L.R.R.M. 2861)Ponticelli v Mine Saftey Appliance Co.104 R.I. 549;247 A.2d 303;1968 R.I. LEXIS 683).

What we have in the instant case is a daycare director emphatically and egregiously telling a physician that she knows the physician IS GOING TO LOSE HER LICENSE because she, day care director, had one conversation with Counsel McIntyre. Even if this information was conditionally privileged, the R.I. State General Laws and Administrative Procedures ACT which govern all Physicians and their property interests (livelihood) strictly read that any information REMAINS CONFIDENTIAL until the Physician has a Hearing and/or an agreed upon consent order is signed. In 1998 when these libelous and slanderous statements were made by Stanley and her employees, Mills had not even as yet received ANY patient complaints.

Plaintiff asserted a list of genuine issues of material fact any one of which should have been sufficient to defeat Defendants' Motion for Summary Judgment. However,in RI this Plaintiff was not given the usual and customary protection of due process. Using the Defendants'own case of Swanson v Speidel Corp et al, the questions of motivation were questions for the jury and are not susceptible for summary disposition-just as Mills was not allowed the usual procedural right to have a Rule 50 B motion overturned by the R.I.Supreme Court. (2)

Without discovery being complete, with too many

genuine issues of material fact existing, motions for summary judgment are to be denied. (Superior Boiler Works, Inc v RJ Sanders Inc. 711 A.2d 628,631 (R.I. 1998). This is the standard used by Superior Court in deciding motions of summary judgment but was not used in the instant case in error. In Greenburg v Puerto Rico Maritime Shipping Authority 835F.2d 932,936 (1st Cir. 1987)"....no room for the judge to superimpose his own ideas of probability and likelihood."

In addition to Ponticelli (1968) Plaintiff submitted Swanson v Speidel Corp et al, a case from R.I. Supreme Court, in support of her reason to deny Defendants' motions for summary judgment and to deny Plaintiff her amended complaint. R.I. Supreme Court did reverse the lower court's decision and sustained the Plaintiff's appeal in that case. Here identical exceptions were considered adequate by the state court in another similar case wherein the Plaintiff, a former employee of Speidel, brought defamation action against Speidel and some of its employees.(Philip Swanson v Speidel Corporaqtion et all 110 R.I..335;293 A.2d 307;1972 R.I. LEXIS 919)

In the Barr v. City of Columbia 378, U.S. 146,149 1964,"We have often pointed out that state PROCEDURAL REQUIREMENTS which are not strictly or regularly followed cannot deprive us of the right of review."

NO PROCEDURAL REQUIREMENTS were EVER followed with respect to Mills.This Plaintiff has been denied EVERY constitutional right, EVERY civil right, and ALL due process of the law. The Defendants in the instant case were the mechanism by which to dismantle Mills' business for the state official (McIntyre in specific), her business (95% Rite Care and CHILD,INC attendees).

THE DECISION BELOW CONFLICTS WITH THIS COURT'S PRECEDENTS

The petition for certiorari demonstrates that the decision below conflicts with this Court's (even the lower court's own precedents) Fourteenth Amendment precedents. Defendants simply apply rulings that have long been supplant ed, retract their own testimony, whereby a decision in favor of such is in error by the lower court. The lower court must claim Plaintiff did not order the transcript of September 242001 wherein Justice Vogel allowed an 1890 case to take precedent over a 1967 ruling that already supplanted it .There would be no other acceptable reason to deny Mills from her right to amend her complaint to include statements made by Defendants which falsely allege Mills did not release medical records. In error the lower court continually alludes to this issue just as the Defendants did. This barred Mills from her due process right to defend herself on this issue (of grave importance for it became COUNT I of Mills' suspension of her medical license, deprivation of her livelihood).

It is therefore, OF GRAVE IMPORTANCE to understand that this is a VERY OBVIOUS and EXCEPTIONAL SHOW OF ERROR by the Rhode Island lower courts. The R.I. Supreme Court errs also in its decision (pf 3) as it reads that Mills sought to amend her complaint AFTER the Defendants moved for summary judgment; it was before. (See Statement of case for dates)

A grant of certiorari has been given when a review of matters in lower courts seems so " shockingly wrong" and thus presents due process questions. In Thompson v City of Louisville362,US 199(1960), the charges and claims against the Plaintiff were so totally devoid of evidentiary support they were deemed unconstitutional under the Due Process Clause of the Fourteenth Amendment. Mills has not been allowed ANY evidence at all; excepting both parties testified without evidentiary support. Mills requests this court review the lower

court decision to withhold this case from the jury, breaching Mills' jury trial rights. Mills cites Justice Douglas in the Wilkerson v McCarthy case in which " importance of preservation for litigants in FELA cases their right to a jury trial...."

Physicians with their property interest, their livelihood should be afforded the rights to a FAIR trial and CONSTITUTIONAL hearing. Prohibiting all forms of discovery violatesfundamental concepts of fairness and justice.

This is NOT a unique case but certainly is one of grave importance. Since the Health Care Quality Improvement Act of 1986 (HCQIA) which gave great leeway to Boards of Medicine for peer reviews, (instituted to maintain and improve the quality of health care), cases of abuse of powers and medical sham review have been on the increase. The guarantee of due process at both state and federal levels are under attack by those wielding such powers and to show its import, it was there current theme of the 47th annual meeting of the American Academy of Physicians and Surgeons. In addition to Patrick v Burgett et al, there is the case of Caine v Hardy,Mason et al.

Civil rights once meant a " limitation of government power," but with its new meaning it may now be an extension of government power as noted 10/90 in the American Spectator by Tom Bethell.

It is a question of national concern when and where medical sham review/immunity/conditional privilege should be allowed. Mills does not just argue that an erroneous decision was made below but that ALL procedural requirements were not fulfilled, rights of due process were denied her as well as completion of discovery, the right to amend her complaint to include those very issues that the R.I. Supreme court addressed and a review of genuine issues of material fact.

Again of national concern is, " active supervision" prong of the test used to determine whether private parties may

claim state -action immunity (conditional privilege) which would require that state officials have and exercise power to review such parties particular anticompetitive acts and disapprove those that fail to accord with state policy. This requirement is not satisfied because there has been no showing that the State Health Departments, Boards of Medicine or even state judiciary systems even could review private decisions (to correct abuses)." Patrick v Burget 486 U.S. 94,108 S.Ct. 1658. The NEXUS is shown by the affidavit of McIntyre submitted in the attempt to exonerate Stanley from her actions and slanderous utterances intended to harm Mills.This affidavit(appendixed) was inappropriately submitted after the closure of discovery and quite subsequently so. It is again " splitting hairs" to state Stanley did not submit any complaint to the Board but of her own admission (Supreme Court decision pg 3) Stanley falsely alleges Mills did not release or had difficulty with releases of medical records. This case as it stands is in clear and obvious conflict with this Court's fourteenth amendment precedents.

Wherefore, Mills requests that this Honorable U.S. Supreme Court exercise its supervisory powers to correct this injustice. Mills requests this court grant her writ of certiorari for review and reversal of the lower courts' decision of summary judgment in favor of Defendants.

CONCLUSION

A grant of certiorari has been given when a review of matters in the lower courts seems so " shockingly wrong" and thus presents due process questions. As in Thompson v Louisville362, US 199 (1960), the charges and claims against this Plaintiff have been so totally devoid of evidentiary support that all claims against her in all of her cases were unconstitutional under the Due Process Clause of the Fourteenth Amendment. She was allowed to testify during her Medical license hearing and during her personal injury case but was not afforded her

rights to any supporting evidence or witnesses. As in the instant case the record below is in error for all the reasons heretofore stated.

Due to the procedural deficits. due to the complete lack of discovery, lack of supporting evidence, and genuine issues of material fact that were not addressed, as well as the denial of the right to amend her complaint (with R.I Supreme Court in error with submitting the very issues Mills was denied to amend and doing so to favor the Defendants)Appellant Mills requests that this Honorable U.S. Supreme Court should note probable jurisdiction of this appeal and the petition for certiorari should be granted.

Respectfully submitted by,
Petitioner prosee
Geraldine Mills, M.D.
191 Squantum Drive
Warwick, Rhode Island 02888
401-463-8433

APPENDIX OPINIONS, FINDINGS JUDGMENTS BELOW

1) " AND TO HAVE IMMUNITY WHEN REPORTING SUSPICION OF CHILD ABUSE (RI Supreme Court at pg 3) ..Stanley was having difficulty getting records for patients of Dr Mills who participated in the CHILD INC program. She talked with McIntyre of the Board about her concerns and discovered that there had been other complaints raised against Dr Mills Footnote (1) of decision reads: " These complaints eventually culminated in Dr Mills 's being suspended indefinitely in July 2001 for treating patients Outside in the backyard of her office, filing a false complaint of child abuse against a parent of one of her patients, and instances of erratic psychological behavior reported by parents of her patients."

Since the decision of the R.I. Supreme Court addresses these issues(not relevant to CHILD INC case except with regards to te medical records issue which Mills was not allowed to amend her complaint to address) Mills will show that she has been prejudiced by the state courts.

Karen Stanley Director of CHILD INC testified in deposition that there were NO Medical Records that she knew of that Mills did not provide.(Deposition at pg 22)

Mills did file a report to the State of R.I. DCYF on a SUSPICION of child abuse on TWO (one just 16 years old)of a state child abuse investigator's four girls. Mills has been supported by Randall Alexander, M.D.,a well respected child abuse expert, and by Dr Marc Feldman's belief that the mother is a munchaussen by proxy.The State of R.I. NEVER investigated as its usual procedure and Mills currently has brought suit against the parents in Federal District Court. The parents have refused to release medical records on the oldest girl's NEAR SIDS event at Bridgeport Hospital Ct. These remain on microfiche. Mills was falsely accused of removing the records from the girl's medical chart. Mills as well as all former doctors were told the records were lost in the Navy.

Mills applied for privileges to Rhode Island Hospital

in 1993 Dr John J.Cronan, took Mills' positive recommendation letters and altered them. He changed the words of one attending from " her straightforward approach to patient care" to erratic approach and an erratic personality to go with it."Mills was told by this same doctor that RI Hospital " does not deal with them foreign medical graduates here." Yet RIH placed a Dr Vincent Armenio of Ross Medical-Mills' school on staff the year before she applied. Mills withdrew her application voluntarily due to this conduct of Dr Cronin. Millsbrought suit in R.I. Supreme Court but none of these issue in her complaint were even addressed by the Court.Dr John Cronan used those exact words, erratic mental personality when describing his own spouse during his trial for domestic violence for which he did receive a conviction.

Only two parents, Joyce and Steve Brown-child abuse investigator, made slanderous remarks and false allegations about Mills having " erratic psychological behavior."Joyce Brown is quoted to have testified at Mills license hearing, she is bizarre to believe that there are gasoline vapors in her building." The State of R.I. is solvent vapor extracting MTBE and petroleum components (gasoline) from beneath Mills'office building as well as the surrounding areas in Cranston R.I. and has been doing so since Mills gave DEM a 90.6 ppm level that she monitored in her office in 1999.Mills is an environmental Physician. R.I. Supreme Court must in error inform " the world"That Mills treated patients "outside." Since Mills' building was so contaminated, she gave chicken pox vaccines on the back porch of her office (house). It was not in a backyard an was to protect the health of her patients. It was a one day Event after receiving frozen vaccine. Only the Browns refused Mills doing a house call to sign a camp and daycare form. Mills did house calls awaiting the ongoing cleanup.These issues are addressed to give this court a flavorof the medical sham review that Mills is enduring in R.I.

2) Mills was denied by the same R.I. Supreme Court a remand of an environmental case to superior court even

though the lower court justice erred in allowing a Rule 50B motion rather than summary judgment. Justice Goldberg addressed Beaulieu Carpet Attorney Kevin Daley, " time and time and time again we have overturned these Rule50 B motions." In Mills' case the Justice stated it was irrelevant because Mills did not prove her case in a Daubert hearing. Mills had 100% confirmation that the VOC's were still present in the carpet 5 years after it was installed. State of R.I. air quality testing was inadequate (Mills believes it was never tested by the State of Rhode Island).

December 19, 2003

No. 2003-90-Appeal
(KC99-753)

Geraldine Mills, M.D.

V.

C.H.I.L.D.,Inc.et al.

Present: William C.J,Flanders,Goldberg,Flaherty, and Suttell,JJ.

PER CURIAM. Granting summary judgment, the Superior Court dismissed claims of slander and interference with contract against a daycare center for low-income families and certain of its employees. It did so because it determined that the Plaintiff, Geraldine Mills,M.D.(Plaintiff or Dr. Mills),failed to submit sufficient evidence to recover damages. The court also ruled that the defendants, C.H.I.L.D.,Inc., Karen Stanley, Vickie Turnquist, and Kristin Brooks were entitled to judgment as a matter of law.

The plaintiff appeals pro se from this summary judgment. She contends that the Superior Court erred because questions of material fact existed about whether defendants acted in good faith and without malice. She also contends that

the Superior Court erred in denying in part her motion to amend her complaint. She argues that her amended complaint sufficiently put defendants on notice of her claims.

Because defendants were entitled to a qualified privilege in uttering the challenged communications, because DR Mills failed to introduce any evidence from which a jury could infer ill will or malice on the part of defendants in making such statements, and because Dr Mills suffered no damages as a result of the alleged intentional interference with contract, we affirm.

Facts and Travel

The defendant, C.H.I.L.D. Inc., operated a daycare and head-start program for children of low-income families. The defendant Karen Stanley (Stanley) was the health coordinator for C.H.I.L.D. Inc. The defendants, Vivki Turnquist (Turnquist) and Kristin Brooks(Brooks) also were employees of C.H.I.L.D. Inc. Accordiing to Nelson Ball (Ball) a parent who enrolled children in the program at C.H.I.L.D. Inc, Turnquist told him on September 30, 1998 that he would have to find another health-care provider because " United Health(Rite Care) was not taking Dr G. Mills." Turnquist explained that she had heard from Stanley that plaintiff no longer was taking Rite Care patients. According to Turnquist, she informed Ball that he might need a new pediatrician because all children in C.H.I.L.D. Inc programs were required too have a pediatrician to be eligible to participate.

Juanita Roberts (Roberts), another parent who had a child in the daycare program, said Ball relayed the information to her that plaintiff " was no longer able to take medical assistance through Rite Care." Brooks confirmed that she told Roberts she had learned from a patient that Dr Mills was not taking Rite Care patients anymore. Brooks said that she gave this information to Roberts because she wanted to make sure Roberts's child still had a pediatrician, as required by the daycare program.

During this same period, Stanley was having difficulty getting records for patients of Dr Mills who participated in the C.H.I.L.D. Inc program. She talked with Bruce McIntyre of the Board of Medical Licensure and Discipline about her concerns and discovered that there had been other complaints raised against Dr Mills.(1) According to Dr Mills's brother, on October 1, 1998 Stanley told him " that something was in the works for[Dr Mills]to lose her license."

As a consequence of the above statements by defendants, DR Mills filed this action for slander and tortious interference with contractual relations on September 29,1999. In her deposition testimony, Dr Mills acknowledged that the above communications of defendants formed the factual basis for her complaint. Later, defendants moved for summary judgment.

Doctor Mills then sought to amend her complaint to include additional counts for invasion of privacy,disparagement,prima facie tort, and a new count for interference with contractual relations. A motion justice granted defendants' motion for summary judgment with respect to the slander count, but denied it without prejudice in regard to the claim for interference with contractual relations. Apparently, the motion justice wanted to allow Dr Mills further time to factually develop the interference-with-contractual-relations count. The motion justice also denied Dr Mills's motion to amend her complaint, except the court allowed her to add the two counts for interference with contractual relations

In June 2002, defendants again filed a motion for summary judgment with respect to the two remaining counts for interference with contractual relations. At the hearing on the motion before a second motion justice, Dr Mills conceded that the patients who allegedly were told to find a new pediatrician did not end up doing so,. The second motion justice granted defendants' renewed motion for summary judgment. He ruled that Dr Mills failed to show that she suffered any damages in connection with her claims for

interference with contractual relations. He noted that prima facie proof of damages is an essential element of the claim of interference with contractual relations .He then entered an order granting summary judgment for defendants. Dr Mills filed a notice of appeal from this order.

Thereafter, a single justice of this Court remanded the case to the Superior Court for the entry of a final judgment and ordered the parties to show cause why we should not decide this appeal summarily. Because they have not done so, we proceed to resolve the appeal at this time.

On appeal Dr Mills argues that defendants acted with malice in committing slander and tortious interference with her contractual relations. She contends that the acts of defendants clearly were intended to hurt her professional reputation and her medical practice. She suggests that defendants' reason for telling certain parents that their physician no longer was accepting Rite Care patients does not ring true. She points out that Rite Care automatically assigns patients a new doctor if they need one. Therefore, she argues, is she had no longer been able to accept these patients, Rite Care would have automatically assigned another physician. As such,defendants need not have been concerned that certain patients would not have a pediatrician.She further argues that the issues of good faith and malice are questions of fact that cannot be decided on summary judgment. Doctor Mills also avers that discovery was not complete. She argues that the facts before the Superior Court indicated that defendants did not act in good faith. Finally, she contends that her motion to amend should have been granted in its entirety because she presented a concise statement of the claims that sufficiently put defendants on notice.

The defendants respond that the statements of Turnquist and Brooks were privileged because they were communicated in the common interest of insuring that their students still would be treated by a physician so they could continue to remain in the C.H.I.L.D. Inc program The

defendants state that Dr Mills failed to present any evidence of malice on the part of Turnquist, Brooks, or Stanley. Therefore, they contend, summary judgment on the slander count was appropriate. With respect to the claims of tortious interference with contractual relations, defendants argue that because their actions were justified, Dr Mills does not have a valid claim for interference with contractual relations., In addition, defendants point out that Dr Mills cannot maintain a cause of action f or interference with contractual relations because she did not suffer any damages from the alleged misconduct.

The defendants also contend that the denial of Dr Mills's motion to amend her complaint was proper because the new counts were not filed within the one-year statute of limitations for words spoken and one o the new counts was not applicable to the conduct in question for this case.The defendants additionally contend that the plaintiff's motion to compel production of documents was overbroad and the documents requested bor no relationship to the issues in this case.

Analysis

This Court reviews ' the granting of a summary judgment motion on a de novo basis, applying the same standards as the motion justice." Mills v, Toselli, 819A.2d 202,205 (R.I.2003) (per curiam); see also Mills v. Rhode Island Hospital, 828A.2d 526,528 (R.I.2003)(mem)." Summary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the court determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law." Delta Airlines Inc v Neary,785 A.2d 1123,1126 (R.I. 2001) " The parties opposing summary judgment may not rely upon mere allegations or denials in their pleadings." Toselli,819A.2d at 205. Instead, "

by affidavits or otherwise they have an affirmative duty to set forth specific facts showing that there is a genuine issue of material fact." Id

Doctor Mills has not provided us with a transcript of the summary judgment hearing on September 24,2001 during which the motion justice denied, in part, her motion to amend her complaint. " The deliberate decision to prosecute an appeal without providing the Court with a transcript of the proceedings in the trail court is risky business. Unless the appeal is limited to a challenge to rulings of law that appear sufficiently on the record and the party accepts the findings of the trial justice as correct, the appeal must fail." 731 Airport Associates LP v H&MRealty Associates, LLC,779 A.2d 279,282 (R.I.2002) (percuriam). In 731 Airport Associates we allowed an appeal because the trial justice had issued a detailed twenty five page written decision and the applicant accepted the factual findings of the trial justice on appeal Id at 283.

Here Dr Mills's failure to order a transcript of the first summary judgment hearing proves fatal to her appeal with respect to the partial denial of her motion to amend her complaint. This Court has held " that the decision about whether to permit a party to amend his or her pleading is one that is left exclusively to the sound discretion of the trial justice and that [this Court] shall not disturb that decision unless it constitutes an abuse of discretion." Normandin v Levine 621A.2d 713,715(R.I.1993); see also Granoff Realty II Limited Partnership v Rossi 823,A.2d 296,298 (R.I.2003)(per curiam). It is impossible to determine whether the motion justice abused her discretion in partially denying the motion to amend because her reasons for the denial are not known, Because of the absence of the transcript, we are constrained to conclude that the trial justice did not abuse her discretion in partially denying the motion. See Watmough v Watmough 430 A.2d 1059,1060-61 (R.I.1981).

"When bringing a defamation action a plaintiff has the

burden of proving that the defendant has communicated a ' false and defamatory" statement about the plaintiff. Cullen vAuclair 809,A.2d 1107,1109-10 (R.I. 2002).(per curiam) "[I]t is for the court to decide whether a statement contains defamatory meaning." Wilkinson v State Crime Laboratory Commission 788 A.2d 1129,1142 (R.I. 2002) " A defamatory statement consists of '[a]ny words, if false and malicious, imputing conduct which injuriously affects a [person's] reputation, or which tends to degrade him [or her] in society or bring him or[her] into public hatred or contempt***"Id. To succeed in an action for defamations, the plaintiff must prove: (1) the utterance of a false and defamatory statement concerning another; (2) an unprivileged communication to a third party;(3) fault amounting to at least negligence;and (4) damages.Budget Termite & Pest Control, Inc v Bousquet 811 A.2d 1169,1172 (R.I.2002) (per curiam); Nassa v Hook-SupeRx Inc.,790 A.2d 368,373 n. 10 (R.I.2002).

The publisher of an allegedly defamatory statement may avoid liability if he or she is privileged to make the statement in question. Swanson v Speidel Corp 110 R.I. 335,339-40,293A.2d 307,310 (1972) (citing Ponticelli v Mine Safety Appliance Co.,104 R.I. 549,551,247 A.2d 303,305-06 (1968)). A qualified privilege exists if the publisher makes the statements in good faith and 'reasonably believes that he has a legal, moral or social duty to speak out or that to speak out is necessary to protect either his own interests of those of third person[s], or certain interests of the public." Ponticelli,104 R.I. 551,247 A.2d at 305-06.

A qualified privilege also may exist when the parties communicating share a common interest. See Swanson 110 R.I. at 338-39,293 A.2d at 309-10;Ponticelli,104 R.I. at 552,247 A.2d At 306. A " reciprocity of duty" must exist between publisher of the statement and the recipient, such that the latter has an interest in receiving the information that corresponds to that of the publisher in communicating it. Pointicelli 104 R.I. at 551,247 A.2d at 306. If there is

information that affects a sufficiently important interest of the publisher and the recipient's knowledge of the defamatory matter will be of service in the lawful protection of that interest the communication may be privilieged. Restatement (Second) Torts 594 at 263 (1977). The determination of whether privilege exists on the facts of a particular case is a question of law for the court to decide. Ponticelli 104 R.I. at 555,247 A.2d at 307,

To overcome such a qualified privilege, the plaintiff must prove that the person making the defamatory statements acted with ill will or malice. DiBiasio v Brown&SharpeManufacturing Co 525 A.2d 489,492 (R.I. 1987). A privileged communication is, by definition, made in good faith. See Ponticelli 104 R.I. at 551,247 A.2d at 305-06. Therefore the burden is on the plaintiff to prove the publisher made the statement with express malice. Id. At 556, 247 A.2d at 308. To support this burden plaintiff must prove that the ' primary motivating force for the communication was the publisher's ill will or spite. " Id.

In this case the granting of summary judgment on the slander claim did not constitute error because the defendant's communications were entitled to a qualified privilege. Stanley, Turnquist, and Brooks as employees of C.H.I.L.D. Inc shared a common interest in providing childcare for low-income families and in ensuring that their clients met the requirements for continued participation in the day-care and head-start programs. One such requirement was the the children in the program have a pediatrician. Any communications between these defendanats about Dr Mills ability to provide continued care for Rite Care patients enjoyed a qualified privilege because the parties shared this common interest. The clients of C.H.I.L.D. Inc likewise, had an interest in receiving information so that they could maintain their children's eligibility to participate in the program. Therefore, defendants' communications enjoyed a qualified privilege against Dr Mills's defamation claim.(2).

Doctor Mills presented no evidence of malice on defendants' part that would overcome this qualified privilege. The defendants testified that they believed in good faith they had a duty to speak out to protect the interests of their clients by insuring that their clients' children had a qualified pediatrician. Both Turnquist and Brooks said that they did not intend to interfere with the relationship between Dr Mills and her patients ;rather the belief that their clients needed pediatricians to continue in the C.H.I.L.D. Inc program motivated the disclosures. Although Dr Mills indicated that Rite Care automatically provided a new physician to patients, that assertion even if it were true did not create a genuine issue of material fact concerning the defendants' good faith belief that their clients would have to secure a physician other than Dr Mills to remain in the daycare program. Doctor Mills did not meet her burden of submitting evidence indicating that the defendants' primary motivating force for making the communicated statements was malice or ill will.

We also hold tha the grant of summary judgment dismissing the interference with contractual relations claims was not in error. The elements necessary to prove a claim for tortious interference with contractual relations are (1) the existence of a contract; (2) the alleged wrongdoer's knowledge of the contract(3) the alleged wrongdoer's intentional interference with the contract and (4) damagesresulting therefrom. Toste Farm Corp v Hadbury Inc 798 A.2d 901 906 (R.I. 2002)Only after the plaintiff establishes these prima facie elements does theburden shift to the defendant to prove that the interference with the contract was legally justified. See Belliveau Building Corp v O'Coin 763 A.2d 622,627(R.I.2000)

Here Dr Mills did not sufficiently establish the elements of her claim. Doctor Mills conceded that she did not lose any patients because of the defendant's alleged interference with her contractual relations. The children of the three individuals who spoke with the defendants about Dr Mills continued to be her patients after the alleged interference

took place. Dr Mills provided no other evidence of damages. Therefore, we conclude, Dr Mills did not make out a prima facie case of tortious interference oif contract because there was no evidence upon which to find that she suffered damages from the alleged interference.

For these reasons, we affirm the summary judgment for the defendants.

Footnotes at page 3

(1) These complaints eventually culmiated in DR Mills's being suspended indefinitely in July 2001 for treating patients outside in the backyard of her office, filing a false complaint of child abuse against a parent of one of her patients, and instances of erratic psychological behavior reported by parents of her patients.

At page 9

(2) Doctor Mills cites in her brief Stanley's alleged statements to Stephen Mills (Dr Mills's brother) that " something was in the works for [Dr Mills] to lose her license." We decline to review this alleged statement as a possible source of defamation against plaintiff because she failed to raise this issue in her complaint.(Appellant's comment- same conversation in which Stanley discusses medical records issue which the R.I. Supreme Court does review and comment on even though

Appellant was not permitted to amend the complaint to embody this very iniformation).

State of Rhode Island and Providence Plantations

Kent,Sc. Superior Court

Geraldine Mills, M.D.
Vs C.A.No: K99-753
C.H.I.L.D. Inc,et al

Affidavit of Stephen Mills

Now comes your affiant, Stephen Mills, and having been sworn, does hereby depose and state:

1. That my full name is Stephen Henry Mills.

2. That I currently reside in the State of Rhode Island.

3. That I am an attorney.

4. That I have personal knowledge of the events testified to herein.

5. That I hereby attest to the following:
   a. I am the brother of Geraldine Mills, M.D.
   b.. On or about October 1, 1998 I called Karen Stanley at C.H.I.L.D., Inc.
   c.. I called in my capacity as the brother of Geraldine Mills,M.D., not as her attorney.
   d. Karen Stanley said words to the effect that something was in the works for my sister to lose her license.

SO ATTESTED "s/ Stephen Henry Mills"

Certification

In Warwick on the 9th day of August 2001, before me personally

appeared /s/ Stephen Henry Mills to me and known by me to be the person executing the foregoing instrument and he/she acknowledged said instrument, by him/her executed, to be his/her free act and deed.

"s/ Steven J. Goldman, NP
Notary Public My commission
expires 6/30/2005"

State of Rhode Island
Kent,Sc.

Superior Court

Geraldine Mills, M.D.
Vs

C.A.No: KC 99-753

C.H.I.L.D.,Inc. (Community
Help and Involvement in
Low Income decision, inc.),
d/b/a and a/k/a CHILD,INC.et al

Affidavit of Bruce W. McIntyre, Esq.

The undersigned, Bruce W. McIntyre, ESQ., being duly deposed and sworn hereby states under oath the following:

1. I am a Rhode Island Attorney employed as legal counsel to the Board of Medical Licensure and Discipline (The "Board")..

2. I was counsel to the Board of Medical Licensure and Discipline in the matter of Geraldine Mills, M.D. #98-187. The attached exhibit is a true and accurate copy of the original administrative decision entered July 10, 2001 concerning Dr Mills. (" the decision").

3. The decision sets forth various findings of fact in

connection with the Board's order indefinitely suspending Dr Mills' license to practice medicine. In the proceeding against Dr Mills no evidence was received from an entity known as C.H.I.L.D,Inc, or from individuals known as Karen Stanley Vicki Turnquist, or Kristen Brooks.

4. In the proceeding against Dr Mills there was no references to any information having been provided by C.H.I.L.D.,Inc.,Karen Stanley, Vicki Turnquist or Kristen Brooks.

5. No complaint against Dr Mills was filed with the Board by C.H.I.L.D.,Inc., Karen Stanley, Vicki Turnquist, or Kristen Brooks.

6. I recall having a telephone conversation in 1998 with a person claiming to be employed by C.H.I.L.dD.,Inc, who inquired how she might obtain medical records from a Dr.Geraldine Mills. After discussing this with her I informed her that a person who wanted to register a complaint against a doctor should submit the complaint in writing to the Board. No complaint against Dr Mills was ever submitted by C.H.I.L.D.,Inc or Karen Stanley, Vicki Turnquist, or Kristen Brooks.

7. The aforementioned conversation played no part whatsoever in the bringing or prosecution of the Board's administrative action against Dr Mills, or the subsequent suspension of Dr Mills' medical license.

8. The suspension of Dr Geraldine Mills' medical license was not caused by any words or conduct on the part of C.H.I.L.D.,Inc Karen Stanley, Vicki Turnquist, and Kristen Brooks.

Subscribed and sworn to before me under pains and penalties of perjury this 27th day of September 2001.

"/s/ Bruce W. McIntyre "

CATUOGNO COURT REPORTING SERVICES

KAREN STANLEY 8/15/2000

22 Q. Were there ever any individuals
23 whose records you tried to obtain from Dr.
24 Mills that you were not able to obtain,

22

1 To the best of your knowledge?
2 A. To the best of my knowledge, I
3 Can't think of any.

State of Rhode Island and Providence Plantations
Department of Health

Safe and Healthy Lives in Safe and Healthy Communities

September 25, 1998

Geraldine Mills, M.D.
191 Squantum Drive
Warwick, Rhode Island 02888

Re: Board Order

Dear Dr Mills:

The Board of Medical Licensure and Discipline has considered past and recent issues regarding your interaction with patients. Your continued difficulty in making arrangements for continuity of care when patients advise you of their desire to transfer care

and your repeated violations of the medical practice act involving medical record requests by pateints and subsequent treating physicians are of concern.

Accordingly, the Board has elected to utilize the law, which permits the Board to mandate and evaluation of you.

You are hereby notified that you must contact this office upon receipt of this letter in order to facilitate this evaluation.

Sincerely,
/s/ Bruce McIntyre
Bruce McIntyre
General Counsel
Board of Medical Licensure
And Discipline

GAS STATION
IS SUSPECTED
LEAK SOURCE
By Richard Salit

CRANSTON– The state Department of Environmental Management has ordered Speedy Oil Co., a Warwick Avenue gas station, to determine if the company is responsible for an underground gasoline leak that has produced vapors inside and adjacent house and office building.

Last Thursday, the agency issues a compliance order requiring the owner of the gas station at 95 Warwick Ave., to determine whether it is the source of the leak according to DEM spokesman Bob Ballou. If it is, Speedy Oil must hire a firm to conduct an environmental cleanup, he said.

LEAK
Continued from Page C 1

Describing the leak as a " significant contamination problem, " Ballou said DEM inspectors recently found five inches of gasoline on the groundwater near the station,. Equipment was installed to vent fumes from the two buildings, he said.

On Feb. 22, a doctor's office at 197 Warwick Ave called DEM to complain of gasoline fumes. Ballou said the agency responded that day and detected fumes there an in an adjacent house at 3 Henry St.

Fumes were found in the storm-sewer system but at levels deemed to be safe, Ballou said. Nevertheless, DEM immediately notified the Cranston Fire Department.

That same day, DEM hired Lincoln Environmental to assess the extent of the problem and to install equipment in the basements of the two buildings to extract gasoline vapors from the surrounding soil.

" The vapors have been reduced to essentially being nonexistent in those two facilities, " Ballou said.

Lincoln Environmental also installed five " micro-wells" in the area to measure ground water for gasoline. The concentration of gasoline in those samples led DEM to issue the compliance order, Ballou said.

[Dr Mills writes as follows on this news report- The vapors were NOT reduced to nonexistent, in fact in spring of 2000 (one year later) Peter Sullivan (DEM) stated there were higher levels than before.
On Feb 19th 99, Stephen H Mills attorney took a monitor report from me (Dr Mills) showing 90.6 ppm gasoline in the basement of my building (107 Warwick Ave). He presented it to DEM Fri Feb 19th. DEM came out 3 days later at 4 pm Monday Feb 22nd. I did not ever report gasoline fumes to DEM. It is in fact not fumes but vapors. The Cranston Fire Department was notified in March when Warwick Ave was shut off.

DEM with the date Feb 24th 99-even reports they received in Nov and Jan.]

There is nothing about the injuries that necessarily suggests physical abuse to me. However, the question of appropriate supervision is relevant. Given DR Mills concerns about the paucity of prior medical information, the spotty regular medical care, and so many injuries, I believe that a report to DCYF is not unreasonable. As a mandatory reporter, she must report when she has a reasonable suspicion. Further investigation would then help to establish whether any basis exists to enhance these suspicions or explain them away.

I can not comment on allegations that apparently are being made about motives or about the investigation into Dr Mils' conduct by the Medical Board (e.g. insufficient information). However,
the child abuse concerns are not out of line.

Please let me know if I can be of further assistance.

Sincerely,

/s/ Randell Alexander

Randell Alexander M.D. PhD
Director, Center for Child Abuse
Morehouse School of Medicine

YAHOO! Mail

From: " Marc Feldman" Munchausen 1713@ hotmail.com
To: environm2002 @yahoo.com
Subject: Re: Inquiry
Date: Wed,15 Oct 2003 13:58:15-0500

Dear Dr Mills:

Randell Alexander, M.D. PhD is the nation's foremost expert on child abuse, and this case seems to involve Munchausen by proxy but also severe non-MBP abuse as well. I would suggest you try to engage him again-frankly, he would do a better job than I would. He is now at the Morehouse Scvhool of Medicine (Atlanta, GA). If he can't help, ask him for a referral.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Kent, Sc. Superior Court

ORDER FOR TRANSCRIPT

Geraldine Mills, M.D.
Plaintiff
vs
C.H.I.L.D.,Inc.
Defendant

Date:

File # 99-0753

The Plaintiff/Defendant, G Mills M.D., within ten (10) days after filing Notice of Appeal, hereby orders from the court stenographer(s), and/or electronic court reporter(s), pursuant to Rules 10(a) and 10(b) of the Supreme Court, a transcript of the following portions of the proceedings which are deemed necessary for inclusion in the record:

	Dates Heard	Judge	Court Stenographer and/or Electronic court Reporter
–1) Entire trial proceedings Excluding jury impaneling----		before Judge--------,	-------
--2)Motion for new trial		-------before Judge--------,	---------
--3)Sentencing		-------before Judge--------,	---------

--4)Motion for Directed Verdict---- before Judge-------,---------
-x5)Other (Please specify) ------- before Judge-------,---------

10/15/2002 (2 pages) 12.00 Justice Pffeifer Robin LePore
9/23/02 (20 pgs) 60.00 Justice Vogel Linda Barrett
1890 Case 9/24/01 Justice Vogel Ernest Dutra

Estimated cost of transcript as indicated above $60.00,12.00,20.00, deposited.

G Mills, M.D.
For Appellant
Please print: Attorney: Geraldine Mills, M.D.
Address: 191 Squantum Drive
City: Warwick State RI ZipCode 02888
Telephone: 401-463-8433

Superior Court
Nov 4 2002 nd
Administrator

/s/ Joseph V. Conley/nd
Deputy Superior Court Administrator

IF THE PROCEEDINGS ORDERED ABOVE WERE ELECTRONICALLY RECORDED, YOU MUST ALSO COMPLETE THE REVERSE SIDE OF THIS FORM.
The above order will be transmitted to the court stenographer and/.or electronic court reporter and a copy filed with the clerk.
0011Y/62 11/22/93

STATE OF RHODE ISLAND
KENT Sc.

SUPERIOR COURT

GERALDINE MILLS, M.D.
VS
C.H.I.L.D.,INC.(COMMUNITY HELP and INVOLVEMENT IN LOW INCOME DECISION, INC.), d/b/a and a/k/a CHILD,INC et al

C.A.NO: 99-753

ORDER DENYING PLAINTIFF'S MOTION
TO COMPEL PRODUCTION

This matter came on hearing before the Honorable Netti C. Vogel on July 23, 2001 on plaintiff's motion to compel defendants to produce documents. After hearing thereon an in consideration thereof it is hereby ordered:

That plaintiff's motion is hereby denied.

Entered as an order of court this 2nd day of Aug 2001.

ENTER:

BY ORDER:
"s/M.K. Rachiele, deputy clerk"
Clerk

STATE OF RHODE ISLAND SUPERIOR COURT
KENT,Sc.

GERALDINE MILLS, M.D.
VS C.A.NO: 99-753
C.H.I.L.D. INC.,ET AL

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO FILE AN AMENDED COMPLAINT

This matter came on for hearing on September 24, 2001, before the Honorable Judge Netti C. Vogel on plaintiff's motion to file an amended complaint. After hearing theron and in consideration thereof, it is heareby

Ordered, Adjudged, and Decreed:

1. Plaintiff's motion is granted to the extent that plaintiff is permitted to file Count II of the amended complaint, alleging interference with contractual and advantageous relationships, and Count V of the amended complaint, alleging interference with contractual relations.

2. Plaintiff's motion is denied with respect to Count I, alleging slander; Count III, alleging invasion of privacy; Count IV, alleging disparagement; and Count VI, alleging a prima facie tort.

3. Defendants shall file and answer or otherwise respond to the amended complaint within twenty (20) days of service of the same upon defendants' counsel.

Entered as an order of Court this 27th day of September 2001.

Order:
"s/ Cynthia Godi
Deputy Clerk 9-27-01

KENT,Sc.

GERALDINE MILLS, M.D.
VS
C.H.I.L.D.INC.,ET AL

C.A.NO: 99-753

ORDER GRANTING PARTIAL
SUMMARY JUDGMENT

This matter came on for hearing on September 24, 2001 before the Honorable Judge Netti C. Vogel on defendants' motion for summary judgment. After hearing thereon and inconsideration thereof, it is hereby

Ordered ,Adjudged, and Decreed:

1. Summary judgment is granted with respect to Count I of plaintiff's complaint, which alleges slander. This count is dismissed with prejudice.

2. Defendants' motion is denied without prejudice with respect to Count II of plaintiff's complaint, alleging interference with contractual and advantageous relationships.

Entered as an order of Court this 27th day of September 2001

Order:
"s/Cynthia Godi
Deputy Clerk 9-27-01

Enter:

STATE OF RHODE ISLAND
KENT,Sc. SUPERIOR COURT

GERALDINE MILLS, M.D.
VS C.A.NO: 99-753
C.H.I.L.D.,INC.,ET AT

ORDER GRANTING DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT

This matter came on for hearing before the Honorable Justice Mark Pfeiffer on September 23, 2002, on the motion for summary judgment filed by all defendants, C.H.I.L.D., Inc., Karen Stanley, Vickie Turnquist, and Kristen Brooks. After hearing thereon and in consideration thereof, it is hereby

Ordered, Adjudged and Decreed:

1. That defendants' motion for summary judgment is hereby granted, dismissing with prejudice plaintiff's amended complaint.

2. The grounds for this motion are that, assuming all facts by plaintiff to be true and drawing all reasonable inferences therefrom in favor of plaintiff, plaintiff has not demonstrated that she suffered any damages as a result of the conduct alleged in the complaint and thus has failed to establish an element of the torts of interference with advantageous relationships and interference with contractual relationships as alleged in the amended complaint.

Entered as an order of Court this 18th day of October 2002.

Order:
"s/James McCormick

Enter:
"s/Mark Pfeiffer 10-18-02

STATE OF RHODE ISLAND SUPERIOR COURT
KENT, Sc.

GERALDINE MILLS,M.D.

VS C.A.NO:00-753

C.H.I.L.D.,INC.,ET AL

ORDER OF ENTRY OF FINAL JUDGMENT

This matter came on for hearing on July 28, 2003 before the Honorable Justice Mark Pfeiffer on defendants' motion for entry of final judgment in this case. After hearing thereon and in consideration thereof, it is hereby ordered.

That defendants' motion for entry of final judgment is hereby granted.

Entered as an order of Court this 29th day of July 2003.

Order:
"s/James McCormick

Enter:
"s/ Mark Pfeiffer 7-29-03

Presented by:

"s/ James McCormick
James T. McCormick, Esq
McKenna & McCormick
128 Dorrance Street
Providence, R.I. 02903
401-831-2970
401-751-1797 fax